

## **REMARKS**

### **I. Status of the Claims/IDS/Figure**

Claims 9, 11 and 16 have been allowed.

Claims 10, 12-15 and 17-32 have been rejected.

Claims 10, 18 and 19 have been amended.

Claims 14-15 and 20-32 have been cancelled.

Claims 9-13 and 16-19 are currently pending.

Claim 10 has been amended to further clarify that the ITR1.1k construct is an insert of pBSH-ITR1.1K-ECFP. No new matter has been added. Claim 18 has been amended such that it now claims a DNA construct for transforming a cell comprising the vector of claim 11. Claim 19 has been amended such that it now defines a DNA construct that comprises the DNA molecule of claim 18.

Applicant notes the three (3) non-patent references previously inadvertently omitted from the Information Disclosure Statement filed February 22, 2005, are textbook references, and full copies of these texts are impractical to provide. Applicant acknowledges the official acceptance of replacement drawing FIG. 26.

Favorable reconsideration of this application, as amended, is respectfully requested.

### **II. Claims 10 and 17 under 35 U.S.C. §112, Second Paragraph**

Page 3 of the Office Action indicates that Claims 10 and 17 are “indefinite” within the meaning of 35 U.S.C. §112, second paragraph. Specifically, the phrase “wherein ITR1.1k is as shown in FIG. 25” is objected to and alleged to be “unclear.”

Claim 10 has been amended to further clarify that the ITR1.1k is an insert of pBSH-ITR1.1K-ECFP.

Accordingly, Claims 10 as amended, and Claim 17 (as it refers to claim 10), are now in even further condition for allowance.

**III. Claims 10, 12-13 and 17 under 35 U.S.C. §112, First Paragraph**

At pages 3-5 of the Office Action, Claims 10, 12-13 and 17 have been rejected under 35 U.S.C. §112, first paragraph, together with a specific amendment suggestion for Claim 10. The Action also includes a request that a Declaration of Biological Deposit in compliance with 37 CFR §1.801-1.809 be submitted based on the alleged absence of sufficient detail provided in the Specification.

Claim 10 (and hence Claim 17 as this claim references Claim 10) has been amended to define ITR1.1k to be an insert of pBSII ITR1.1K-ECFP. ITR1.1k is described in the Specification at paragraph 93. The ITR sequence employed to prepare the ITR1.1k is provided at SEQ ID NO: 40 (Figure 3). A description of how the ITR1.1K was prepared appears in the Specification at paragraph 93.

The vector designated pXL-BacII-ECFP of Claim 12 is described in the Specification at paragraph 66-67 (Example 5), and again at paragraph 93.

The vector designated pBSII-ITR1.1k-ECFP of Claim 13 is described in the Specification at paragraph 97, where the construction of this plasmid is described in detail. The plasmid is also depicted in Figure 24.

It is the Applicants' position that the noted passages of the Specification, figures, and sequence listings provide adequate disclosure of the invention defined in Claims 10, 12, 13 and 17. However, should the Examiner require, a Declaration of Biological Material Deposit in compliance with 37 CFR §1.801-1.809, a Declaration signed by Applicants' representative will be submitted upon notice of allowable subject matter. Said Declaration will be submitted to even further comply with 35 U.S.C. §101. It is intended that no presumption be created that said Deposit is necessary to satisfy 35 U.S.C. §112, first paragraph.

Withdrawal of the rejection of Claims 10, 12, 13 and 17 under 35 U.S.C. §112, first paragraph, is therefore respectfully requested.

**IV. Claims 28-32 under 35 U.S.C. §112, First Paragraph**

At pages 5-6 of the Office Action, Claims 28-32 have been rejected under 35 U.S.C. §112, first paragraph, as new matter. Claims 28-32 have been cancelled, without disclaimer or prejudice, in the interest of expediting the prosecution of the present case to allowance. The rejection is therefore deemed moot.

**V. Claims 14-15 and 18-27 under 35 U.S.C. §102(b) as Anticipated by Cary *et al.* (1989)**

At pages 7-10 of the Office Action, Claims 14-15 and 18-27 have been rejected under 35 U.S.C. §102(b) as anticipated by Cary *et al.* (1989).

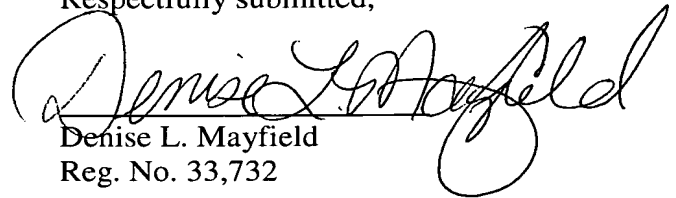
Claim 18 (and Claim 19 that now references Claim 18) has been amended such as to define a DNA construct comprising the vector of Claim 11. The vector of Claim 11 has previously been deemed allowable. It is therefore respectfully submitted that Claims 18-19 as now presented are also allowable.

Claims 14-15 and 20-27 have been cancelled, without disclaimer or prejudice, in the interest of expediting the prosecution of the present case to allowance. The rejection of these Claims is therefore deemed moot.

**VI. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance, and favorable action is respectfully solicited. If the Examiner has any questions or concerns regarding the present amendment, the Examiner is invited to contact Denise L. Mayfield at (703) 563-2003.

Respectfully submitted,

  
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September 30, 2005